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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Federal Communications Commission  
Office of Secretary

Review of the Commission's  
Broadcast and Cable  
Equal Employment Opportunity  
Rules and Policies

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**MOTION FOR EXTENSION OF TIME  
OF REPLY COMMENT DEADLINE**

Pursuant to 47 C.F.R. § 1.46, the National Association of Broadcasters ("NAB");<sup>1</sup> the Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, Maryland/District of Columbia/Delaware Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters

<sup>1</sup> NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

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Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters ("State Associations")<sup>2</sup> (collectively, "Movants") request that the Commission extend the reply comment deadline in the above-captioned proceeding. The reply comment deadline currently is March 31, 1999.<sup>3</sup>

As noted in a letter filed by David Earl Honig on March 1, 1999, the Minority Media and Telecommunications Council and over 20 national civil rights organizations (hereinafter "MMTC") were unable to file their comments by the comment deadline and moved for consideration of their comments *nunc pro tunc*.<sup>4</sup> Due to the apparent size and extent of the

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<sup>2</sup> The State Associations represent broadcasters in all states, the District of Columbia and Puerto Rico.

<sup>3</sup> See Order, \_\_\_ FCC Rcd \_\_\_, adopted February 11, 1999. By its own motion, the Mass Media Bureau extended the reply comment deadline in MM Docket 98-204 to correspond to the extension of the comment deadline granted to MMTC.

<sup>4</sup> See Letter to Magalie Roman Salas, from Minority Media and Telecommunications Council, filed March 1, 1999.

MMTC's comments, Movants believe there is good cause to extend the reply comment deadline.

The MMTC expects to file four volumes of comments in this proceeding. Volume I, "The Basis for FCC EEO Regulation," is approximately 175 pages in length. There is no indication of the length of the other three volumes. MMTC's March 1, 1999, letter stated that Volume I would be filed "promptly," with the other Volumes filed "promptly thereafter."<sup>5</sup> Apparently, Volume I was filed on March 5, 1999,<sup>6</sup> but as of March 10, 1999, it is not available over the Commission's Electronic Comment Filing System ("ECFS").

Movants note that the Commission declined to extend the comment deadline beyond March 1, 1999, because MMTC's three week extension request was "too long and inconsistent with the timely dispatch of the Commission's business."<sup>7</sup> However, should the Commission decide to consider MMTC's comments, it must allow additional time for *all* parties to review and respond to, not only the timely filed comments, but also all of the volumes that will be filed by MMTC.

The Court of Appeals for the District of Columbia Circuit recently addressed the procedural issue of allowing parties adequate notice and opportunity to respond.<sup>8</sup> In *Air Transport*, a local public airport authority submitted an application to impose a Passenger Facility Charge.<sup>9</sup> After submission of an application, the FAA must provide notice of the

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<sup>5</sup> *See id.*

<sup>6</sup> *See Better long than never, Broadcasting & Cable*, Mar. 8, 1999, at 16.

<sup>7</sup> *Order, supra* note 2, at ¶ 5.

<sup>8</sup> *Air Transport Association of America v. Federal Aviation Administration*, No. 98-1109, slip op (D.C. Cir. Mar. 5, 1999).

<sup>9</sup> *Id.*

application and an opportunity for all interested parties to submit comments on the application.<sup>10</sup> Although there was notice of the original application and a comment period, the FAA failed to make ex parte material submitted by the applicant available for comment by interested parties.<sup>11</sup> The court found that the FAA's procedure was akin to the notice and comment procedure for informal rule making under the APA, and found that the FAA failed to "apprise interested persons of the 'subjects and issues' involved in the rulemaking."<sup>12</sup> The court also cautioned "that the most critical factual material that is used to support the agency's position on review must have been made public in the proceeding and exposed to refutation."<sup>13</sup>

This decision is applicable to the current situation. In MMTC's extension request, it was noted that its comments would address nearly every issue raised by the Commission and would include extensive factual studies.<sup>14</sup> Other parties must be given the opportunity to respond to the comments and any studies submitted. There is no indication when all four volumes of MMTC's comments will be filed and/or available on the ECFS, and the clock is ticking.

Just as MMTC found it impossible to complete its comments by March 1, 1999, due to the "magnitude of the task," it likewise will be impossible for commenters to reply to all of

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)(other citations omitted)).

<sup>13</sup> *Id.* (citing *Association of Data Processing Serv. Orgs. v. Board of Governors of the Federal Reserve System*, 745 F.2d 677 (D.C. Cir. 1984)).

<sup>14</sup> Motion for Extension of Time filed by MMTC on February 10, 1999.

the materials submitted in this proceeding by March 31, 1999, because an important part of comments for the record are not yet available. Further, because MMTC has indicated that it will submit factual studies, the Commission must allow sufficient time for those studies to be evaluated, and any further research suggested by those studies to be undertaken.

Movants respectfully request that the Commission extend the reply comment deadline in this proceeding to sixty (60) days after the date that the MMTC's final volume, "Volume IV", is filed with the Commission.

Respectfully submitted,

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